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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,615	12/21/2001	Gilles Rubinstenn	05725.1010-00	3934

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EXAMINER
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STREGE, JOHN B

ART UNIT	PAPER NUMBER
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2625

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/024,615	<b>Applicant(s)</b> RUBINSTENN ET AL.	
	<b>Examiner</b> John B Strege	<b>Art Unit</b> 2625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/21/03</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 11 is objected to because of the following informalities: the claim should end with a period. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-12, 15-19, and 21-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Furuta et al. US. Patent Application Publication 2001/0037191 (hereinafter "Furuta").

Furuta discloses a three-dimensional beauty simulation client-server system that can display a users face in a three-dimensional fashion and provide a more realistic beauty simulation (paragraph 6). As seen in figure 3 multiple cameras are disclosed (1a, 1b) and the images are sent to the 3D face model generating unit 2. Alternatively if the user has a camera-equipped computer or internet cellular phone, a plurality of images obtained therefrom may be sent to the server, enabling the server 10 (figure 1) to construct a 3D face model (paragraph 32). Also disclosed is the makeup simulation unit

3 that allows simulations of makeup, cosmetic surgery, clothing, perfume, accessories, hair style, etc. based on the 3D information (paragraph 41). Using this simulation the consumers face may be reproduced with the new makeup style, etc. (paragraph 38).

Regarding claims 2-5, and 21-24 Furuta discloses that the means of the invention may be realized through software (paragraphs 161-162). Furthermore the server consists of a data control unit for storing information (10c figure 1).

Regarding claim 6, makeup is a beauty product.

Regarding claim 7, the makeup simulation unit 3 allows simulations of makeup, cosmetic surgery, clothing, perfume, accessories, hair style, etc. (paragraph 41).

Regarding claim 8, Furuta discloses that using morphing technology can enable one to resemble one's favorite model, and the user can learn what percentage of the image comprises her own features and what percentage comprises the models features (paragraph 41). Furthermore a simulation in which the level of beauty and degree of aging of the face are assessed can be carried out (paragraph 43).

Regarding claim 9, Furuta discloses that the makeup simulation drawing software uses a method in which the face as a whole is made up by applying makeup to individual parts of the face, and the part of the face is selected by the user including lips, eyebrows etc. In this method the sought makeup style is pasted onto the image (paragraph 57).

Regarding claim 10-11, as discussed Furuta discloses makeup.

Regarding claim 12, Furuta discloses that it is possible to view the face from various angles, as if the camera viewpoint had continuously moved (paragraph 104).

Regarding claim 15, Furuta discloses that the processing can take place through the internet to allow for analyzing the image at a location remote from the subject.

Regarding claim 16, as seen in figure 3 a plurality of cameras (1a 1b) are used to capture a plurality of facial images.

Regarding claim 17, Furuta discloses the facial image generator beginning with paragraph 108 in which a three dimensional structure (frame) is used in coordination with the captured images.

Regarding claim 18, Furuta discloses that by analyzing the condition of ones facial skin and the light and dark areas reflecting the protrusions and indentations thereon (read as wrinkles) the degree of ones beauty and apparent age can be objectively evaluated.

Regarding claim 19, the evaluation can take place over an internet connection (11 figure 1) allowing for analyzing at a location remote from the subject.

Regarding claim 25, Furuta discloses that using morphing technology information to enable one to resemble one's favorite model may be obtained, for example intermediate images resembling a cross between the user and their favorite model may be created (paragraph 41).

Claim 26 is similar to claim 1, except it is directed to a computer readable medium. Thus the same arguments used for the rejection of claim 1 apply equally to the rejection of claim 26.

Claim 27 is similar to claim 1, except it is directed to a system. Thus the same arguments used for the rejection of claim 1 apply equally to the rejection of claim 27.

4. Claims 1-5, 7,9,12,15-17, 21-22, and 26-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Nigro et al. USPN 6,792,401.

Nigro discloses a system where a customer can view and orient his or her real-time image, wear a sales item on a virtual personal model, and order prescription glasses on the internet (as seen in at least the abstract). A 3D model is created using software (at least col. 3 lines 13-42). All of the other limitations are clearly anticipated as seen in figures 1-6.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13-14, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Furuta et al US Patent Application Publication 20010037191.

Claim 13 is dependent on claim 1 (rejected above by Furuta) and recites instructing the subject on how to transmit the at least one captured image to a location remote from the subject, wherein the three-dimensional representation is constructed at the remote location. Furuta discloses that the consumer may send images to the server to construct 3D face data (paragraph 32). Furuta does not explicitly disclose instructing the subject on how to transmit the image. It is obvious that the internet site used to

submit the images would provide some instruction as to how to submit the images, so that the user could avoid frustration of trying to find out for themselves how to do it, and thus experience a pleasant shopping experience and want to return in the future for more shopping.

Claim 14 discloses prompting the subject to capture the at least one image of the subjects face. Furuta discloses that images may be captured (paragraph 32). It would be obvious to prompt the user before taking the image so that an image of the user with his eyes closed or in an awkward position would not be used for the later analysis.

Regarding claim 20, Furuta does not explicitly disclose proposing a beauty product to the subject based, at least in part, on the analyzing of the wrinkles. However Furuta does discuss preparing brochures custom-tailored to the attributes of each group of users and to send brochures with different contents to each (paragraph 82).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to propose a beauty product based on the analysis. At a cosmetics store the salesperson generally proposes various types of products, and Furuta is interested in simulating this experience over the internet, thus it would be obvious to propose a product based on the analysis in order to increase sales.

7. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Furuta et al US Patent Application Publication 20010037191 in view of Bechara WO 97/29441.

Furuta does not explicitly disclose proposing a product based on the analysis of the face model. Furuta does discuss preparing brochures custom-tailored to the

attributes of each group of users and to send brochures with different contents to each (paragraph 82).

Bechara discloses a system and method for choosing and buying spectacles and color contact lenses. Bechara specifically recites, "according to the customer's cosmetic preferences and the features of the image of his face, the operating program presents a showcase with suggestions of best fit eyewear products" (at least stated in the abstract). This allows for increased speed in the process of choosing eyewear which would result in greater customer satisfaction (page 6 lines 1-13).

Furuta and Bechara are analogous art because they are from the same field of endeavor of analyzing a user's face image and allowing them to view a simulation of how they would look with different products.

At the time of the invention it would have been obvious to one of ordinary skill in the art to combine Furuta and Bechara to suggest different cosmetic products based on the analysis of the skin condition. The motivation for doing so would be to allow the user to find desired products quicker and thus improve their shopping experience. Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to combine Furuta and Bechara to obtain the invention as specified in claim 20.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

USPN 6,502,583 Method of correcting face image, makeup simulation method, makeup method makeup supporting device and foundation transfer film



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USPN 5,825,941 Aesthetic imaging system

USPN 6,453,052 Automated method and image processing system for hair style simulation

USPN 6,692,127 Spectacles fitting system and fitting methods useful therein.

**Contact Information**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B Strege whose telephone number is (703) 305-8679. The examiner can normally be reached on Monday-Friday between the hours of 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bhavesh Mehta can be reached on (703) 308-5246. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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